

The Commonwealth of Massachusetts
DEPARTMENT OF —
TELECOMMUNICATIONS AND ENERGY

June 23, 2004

D.T.E. 03-92

Assessments applied to selected utility companies owning or having entitlements to electric power from certain nuclear generating facilities inside and outside of Massachusetts for the purpose of reimbursing the Commonwealth for expenditures incurred by the Massachusetts Energy Management Agency related to such facilities pursuant to Section 2 of Chapter 26 of the Acts of 2003.

Massachusetts Emergency Management Agency
Nuclear Safety Preparedness Program
for Fiscal Year 2004
(Appropriation Item Nos. 8800-0100, 8800-0200)

On September 16, 2003, the Massachusetts Emergency Management Agency (“MEMA”), pursuant to Section 2 of Chapter 26 of the Acts of 2003, requested that the Department of Telecommunications and Energy (“Department”) establish an apportionment and make an assessment against nuclear regulatory commission licensees operating nuclear power generating facilities located inside the Commonwealth and electric companies in the Commonwealth that own, in whole or in part, or purchase power from, nuclear power plants outside the Commonwealth but within ten miles of Massachusetts cities or towns. On January 10, 2003, the Department made similar assessments for Fiscal Year 2003 totaling \$630,801 to fund expenditures required by Section 2 of Chapter 184 of the Acts of 2002. See

D.T.E. 02-74 (2003). Because the Pilgrim Nuclear Power Station is the only nuclear power station generating electricity in the Commonwealth, Entergy Nuclear Generation Company (“Entergy”), by letter dated January 7, 2004, acknowledges responsibility for the entire assessment of \$358,128 for nuclear power plants in Massachusetts, pursuant to Item 8800-0100 of Section 2 of Chapter 26 of the Acts of 2003.

Since 1995, the Department has determined that an equitable method of allocating costs for nuclear power plants located outside the Commonwealth but within ten miles of Massachusetts cities or towns was on the basis of the entitlement of Massachusetts utilities to power from the Seabrook and Vermont Yankee nuclear power plants.¹ For the purpose of this assessment, the same method will be followed. Further, consistent with previous orders, the Department is using entitlements as of December 31, 2002, as a basis for the assessment.

Commonwealth Electric Light Company and Montaup Electric Company indicated that they have sold their megawatt (“MW”) entitlements to Vermont Yankee and Seabrook, and have no entitlement as of December 31, 2002 (Letter from NSTAR Electric at 1 (December 19, 2003); Letter from National Grid at 1 (December 22, 2003)). Cambridge Electric Light Company, New England Power Company (“NEP”), and Western Massachusetts Electric Company, reported that, while selling off their ownership interests in Seabrook and Vermont Yankee during calendar year 2002, each retained a MW entitlement with Vermont Yankee through purchased power agreements (“PPAs”) (Letter from NSTAR Electric at 1

¹ See D.T.E. 02-74 (2003); D.T.E. 02-09 (2002); D.T.E. 01-08 (2001); D.T.E. 00-23 (2000); D.T.E. 99-14 (1999); D.T.E. 98-37 (1998); D.P.U. 97-19 (1997); D.P.U. 95-124 (1996); and D.P.U. 94-179 (1995).

(December 19, 2003); Letter from National Grid at 1 (March 10, 2004); Letter from Northeast Utilities System at 1 (January 27, 2004)).

NEP explains that it simultaneously entered into a PPA with the new owners of Vermont Yankee on July 31, 2002, and into a service agreement with a third party to receive all of the power available to NEP under the PPA (Letter from National Grid at 1 (March 10, 2004)). Additionally, NEP contends that with the sale on October 31, 2002 of its ownership interest in Seabrook, NEP no longer has any interest in either Vermont Yankee or Seabrook, no longer owns or operates works for the manufacture, sale, or distribution of electricity within the Commonwealth, and therefore should not be subject to any liability for the MEMA annual assessment (Letter from National Grid at 2 (March 10, 2004)).

The Department notes as an initial matter that the 8800-0200 line-item does not require ownership in a nuclear power plant to make a company subject to assessment. Rather, the line item explicitly provides jurisdiction for companies that own or “purchase power from” nuclear power plants located outside the Commonwealth. Therefore, the MW entitlements derived from PPAs are valid entitlements for inclusion in the assessment of this line-item.

The line-item also draws no distinction between those companies that receive a MW entitlement for (1) their own use or (2) pass-through to a third party. The line-item states explicitly that if an electric company doing business in the Commonwealth receives power from Vermont Yankee or Seabrook, then that company is subject to appropriation under the line-item. Therefore, the fact that NEP entered into a service agreement with a third party to

receive all of NEP's power available from Vermont Yankee does not invalidate NEP from the MEMA assessment.

NEP also argues, however, that with the sale of its ownership interest in Seabrook on October 31, 2002, it is no longer an "electric company" under the definition provided in line-item 8800-0200 (National Grid Letter at 2 (March 10, 2004)). An "electric company" subject to the Department's "jurisdictional control" is (1) a corporation organized under Massachusetts law (2) for the purpose of selling or distributing electricity in the Commonwealth. G.L. c. 164, § 1. NEP is a corporation organized under Massachusetts law. See, 2002 Annual Return to the Department ("FERC Form 1") at 450. NEP sold in excess of 553 megawatt hours ("MWH") of electricity to contract industrial customers in calendar year 2002, generating \$86,594 in ultimate sales to customers. FERC Form 1, at 300, line 10. More significantly, in the same year NEP delivered 1,681,901 MWH to nine wholesale customers, including Fort Devens in Massachusetts, generating revenue in the amount of \$76,165,047 from sales for resale. Id. at 310-311. In addition, examination of the FERC Form 1 demonstrates indisputably that NEP had significant assets in Massachusetts, consisting largely of transmission lines and substation facilities. FERC Form 1, at 422-423.1, 426-426.4. Thus, in calendar year 2002, NEP was an "electric company" for purposes of assessment for this line-item because it sold or distributed electricity within the Commonwealth. See, Letter Regarding Holyoke Water Power Company Annual Assessments at 3 (August 29, 2002) (a company found to be a jurisdictional electric company in Massachusetts for many years, including the year in question, and thus responsible for payment of its share of assessments).

The Department determines that the following companies shall be assessed on each of their respective shares of the companies' combined MW entitlement of both Seabrook and Vermont Yankee nuclear power plants. Therefore, the Department makes the following assessments:

<u>Name of Company</u>	<u>Nuclear MW Entitlement</u>	<u>Percent of Share</u>	<u>Assessments</u>
Cambridge Electric Light Company c/o NStar Service Company One NSTAR Way Westwood, MA 02090	11.60	9.0746	\$ 24,453.47
Commonwealth Electric Company c/o NStar Service Company One NSTAR Way Westwood, MA 02090	0.00	0.0000	\$ 0.00
New England Power 25 Research Drive Westborough, MA 01581	103.00	80.5758	\$ 217,129.93
Western Massachusetts Electric Company, a Northeast Utilities Service Company P.O. Box 270 Hartford, CT 06141	13.23	10.3497	\$ 27,889.60
Montaup Electric Company 25 Research Drive Westborough, MA 01581	0.00	0.0000	\$ 0.00
<u>Totals</u>	127.83	100.00	\$269,473.00

Accordingly, it is

VOTED: That an assessment in the amount of \$358,128 against Entergy Nuclear Generation Company is hereby made to provide for the reimbursement to the General Fund of the Commonwealth for appropriations made by the General Court for Fiscal Year 2004 to fund

state measures pertaining to nuclear safety emergency preparedness for nuclear generating plants in the Commonwealth; and it is

FURTHER VOTED: That an assessment totaling \$269,473 is hereby made to provide for the reimbursement to the General Fund of the Commonwealth for the appropriations made by the General Court for Fiscal Year 2004 to fund state measures pertaining to nuclear safety emergency preparedness of nuclear generating plants operating outside Massachusetts but within ten miles of Massachusetts cities and towns; and it is

ORDERED: That the companies listed herein be assessed in the amounts indicated.

By Order of the Department,

/s/
Paul G. Afonso, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Eugene J. Sullivan, Jr., Commissioner

/s/
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).